

COUNCIL & STAFF PRESENT:

Richard Detweiler	Mayor
Jerry Mills	Councilmember
Roger A. Edge	Councilmember
Glen Moritz	Councilmember
Robert L. Russell	Councilmember
Howard Hickman	City Attorney
Mari Macomber	City Manager
Vickie Brumbaugh	City Clerk
Randy Behrens	Fire Chief
John Buckwalter	Public Works Director
Sarah Halstead	Community Services Director
Jim Hughes	Police Chief
Ed Ieans	City Engineer
Pat Meredith	Human Resource Director
Katie Myers	Finance Director
Melanie Smith	Assistant to City Manager

The City Council of the City of Kirksville, Missouri, met in a Regular Session on Monday, May 6, 2013, at 6:05 p.m. in the City Hall Council Chambers.

INVOCATION and PLEDGE

Deacon Dave Ream, of the Mary Immaculate Catholic Church, gave the Invocation. Boy Scout Troop 401 led the Pledge of Allegiance.

MINUTES

Councilmember Edge moved to approve the minutes of the regular session of April 15, 2013; seconded by Councilmember Russell. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

ORDER OF AGENDA

Councilmember Edge moved to approve the Order of the Agenda; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

INFORMATION PRESENTATIONS & PUBLIC HEARING

Mayor Detweiler opened the Public Hearing at 6:08 p.m. to discuss the South 63 Community Improvement District (CID) petition amendment.

Melanie Smith explained the blight study needs updating to allow for the use of funds for private use in the South 63 CID. The Ordinance to amend the petition will be considered on first reading only at tonight's meeting, and second reading at the next Council meeting on May 20.

There being no further comments, Mayor Detweiler closed the Public Hearing at 6:09 p.m.

CITIZEN PARTICIPATION

None

UNFINISHED BUSINESS

None.

ACTION PRESENTATIONS

BILL NO. 2013-24

RESOLUTION NO. R5-6-670

A RESOLUTION OF THE CITY OF KIRKSVILLE, MISSOURI, AMENDING THE DEFERRED COMPENSATION PLAN TO PERMIT LOANS.

WHEREAS, the City of Kirksville has employees rendering valuable services; and

WHEREAS, the City of Kirksville has established a retirement plan (the "Plan") for such employees which serves the interest of the City of Kirksville by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the City of Kirksville has determined that permitting participants in the retirement plan to take loans from the Plan will serve these objectives.

NOW, THEREFORE BE IT RESOLVED by the City of Kirksville, Missouri, that the Plan will permit loans.

Councilmember Edge moved to approve Bill No. 2013-24; seconded by Councilmember Russell. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

BILL NO. 2013-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI APPROVING AN AMENDED PETITION TO ESTABLISH THE SOUTH 63 CORRIDOR COMMUNITY IMPROVEMENT DISTRICT.

Councilmember Edge moved to approve Bill No. 2013-25 on first reading; seconded by Councilmember Russell.

The financial projections for the TIF have come in less than expected which leaves most of the resources coming from the CID. The developer asked that the TIF and CID monies be combined to cover the project improvements. The proposed amendment includes an updated blight analysis study that provides a finding of blight for the CID. The second reading of this Ordinance will be heard at the May 20th Council meeting.

Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

BILL NO. 2013-26

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI GRANTING A SPECIAL USE PERMIT FOR THE CONSTRUCTION AND OPERATION OF A CELL PHONE COMMUNICATIONS TOWER LOCATED AT 1016 N. COTTAGE GROVE AVENUE AND DESCRIBED HEREIN.

Councilmember Edge moved to approve Bill No. 2013-26 on first reading; seconded by Councilmember Russell.

U.S. Cellular identified a site owned by the City of Kirksville as an area they wish to lease to locate a communications tower on. The site is the location of the City's lift station for wastewater. The Planning and Zoning Commission voted three to two to turn down the request at their meeting of April 10, 2013. Wireless Group and U.S. Cellular requested that their application for a special use permit be taken to the City Council which will require a two-thirds vote for approval. The proposed area for the tower is at the rear of a residential zone. Resident concerns that were voiced at the Planning and Zoning Commission meeting were: danger of tower falling, excessive radio frequency radiation, loss of wildlife viewing, decrease in property values and unsightly.

The City would receive \$1,700 per month as a lease payment. The current lift station area is fenced, and it would be land more difficult to sell in the future since it has an underground tank.

Mayor Detweiler invited comments from the audience.

Gary Briddle, 1603 East Illinois, said that he owns 77 acres around the proposed area and no one has contacted him.

Charles Gran, 32 Overbrook Drive, expressed concern about the decrease in property value.

Chad Mohler, 41 Kellwood Drive, agreed that it is good to have revenue for the City. He is worried about the radiation from the tower, there has not been many studies done, and pointed out that there could be a 5% increase in cancer due to the radiation.

Mark Appold, 27 Overbrook Drive, said the city invested a lot in the hike/bike trail and it is a wildlife area. Placing a tower in this area will distort the view.

Christine Gran, 32 Overbrook Drive, asked if the other two cell phone towers are located near a residential area.

Mark Williams, 59 Castle Drive, asked if \$20,000 is good for the people. What is the benefit? There is land everywhere. Let's protect the kids.

Tim Mills, 1409 Pawn Drive, lives a straight path from the tower. He is concerned about the radiation that could impact this area. There is plenty of ground away from a residential area.

Pat Shoush, 21 Overbrook Drive, stated the proposed site is in her back yard. Her concerns were the decrease in property value and radiation. A tower can pulsate an

unknown into their homes. She said there needs to be more statistics about the effects of these towers. She asked if it is worth \$20,000?

John Pinkowski, 15 Overbrook Drive, said that he would not have bought his house if the tower was already there.

Mohammad Shahmorad, 25 Overbrook Drive, pointed out that there is a power line a foot from the fence. If the tower falls, the power will be cut. He is also concerned about health and property value decline. He asked who will be responsible for damages.

Danelle Martel, 2 Center Road, said she was raised in this neighborhood and her mother lives in this neighborhood. She questioned if U.S. Cellular looked at any other sights. She asked that the Council listen to what the residents want.

Diane Johnson, 28 Vista Drive, said there are many retired residents in Kellwood. The property value will decrease.

Dave ? , Kings Road, said this will not enhance the neighborhood or hike/bike trail.

Brady Bridle, 1603 East Illinois, said we don't know what the effects are from a cell phone tower. He asked the Council to consider another site that is not near a residential area.

Mike Seamands, representative of U.S. Cellular, St. Louis, explained there are already three or four other type towers in that area near the lift station. A cell tower has to be near a population to which it serves. Price value of homes in areas where towers are built does not change. He added that a tower cannot be built in a flood plain. Towers are designed to crumple and bend in the middle; they do not fall over. There will not be any lights on the tower. The question was asked as to why it is not a navigation matter without the lights. Mr. Seamands explained that they do report the tower to the FAA, but unless the tower is in a dangerous area, they do not have to have lights on the tower.

Another question was asked if there was any consideration given to what is underground. Councilmember Russell responded that the City knows what is underground; if it was hazardous, it will be made known.

There being no further comments, Mayor Detweiler asked the Council to vote. Motion *failed*: Noes – Councilmembers Jerry Mills, Glen Moritz and Robert Russell. Ayes – Mayor Detweiler and Councilmember Edge.

BILL NO. 2013-27

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, APPROVING A LOT SPLIT WHICH IS PART OF A TRACT OF LAND LOCATED AT 2201 S. BALTIMORE STREET IN KIRKSVILLE, MISSOURI.

Councilmember Edge moved to approve Bill No. 2013-27 on first reading; seconded by Councilmember Mills.

The Bank of Kirksville is owner of this property known as the Hollister Plant. The lot splits off eight acres on the east end of the property which is landlocked. The adjacent property is owned by the Country Club, and they will purchase the land to combine with their property. All requirements are met.

Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

BILL NO. 2013-28

AN ORDINANCE AMENDING CHAPTER 19, SECTIONS 19-71 AND 19-73, OF THE CITY CODE OF THE CITY OF KIRKSVILLE, MISSOURI REGARDING THE BOAT HORSEPOWER AT FOREST LAKE.

Councilmember Edge moved to approve Bill No. 2013-28 on first reading; seconded by Councilmember Russell.

In March, the Council approved an ordinance to increase boat registration fees. The Lakes, Parks and Recreation Commission then discussed the use of boats over 90 hp at idle speed and therefore propose another ordinance that will allow all visitors to use their boats with greater than 90 hp on the lake at idle speed. The Council will still review and approve all requested tournaments.

Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

BILL NO. 2013-29

AN ORDINANCE AMENDING CHAPTER 15 OF THE CODE OF THE CITY OF KIRKSVILLE, MISSOURI REGULATING THE SPEED LIMITS OF MOTOR VEHICLES AND TRAFFIC.

Councilmember Edge moved to approve Bill No. 2013-29 on first reading; seconded by Councilmember Mills.

The residents in Weatherstone Housing Addition have requested a reduction in the speed limit from 30 mph to 20 mph.

Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

BILL NO. 2013-30

AN ORDINANCE AMENDING SECTION 25-181 OF THE CITY CODE OF THE CITY OF KIRKSVILLE REGARDING CONTROL OF THE STORMWATER SYSTEM.

Councilmember Edge moved to approve Bill No. 2013-30 on first reading; seconded by Councilmember Russell.

The ordinance's objectives are to regulate the contribution of pollutants to the storm sewer system by any user; to prohibit illicit connections and discharges to the storm

sewer system; and to establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with the ordinance.

Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Bid – Bar Screen for Wastewater Treatment Plant

Councilmember Edge moved to accept proposals from Parkson Inc for a bar screen unit from Heggemann for removal and replacement of the bar screen at the Wastewater Treatment Plant, and from TH&N for electrical work supporting the replacement of the bar screen; seconded by Councilmember Russell. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Bid – Painting of South Water Tank

Councilmember Edge moved to approve a bid from Ozark Applicators to paint the exterior of the south water tank; seconded by Councilmember Russell. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

The cost of the painting is \$56,500. The Truman logo will be replaced onto the tank.

Bid – Advanced Surface Treatment Program

Councilmember Edge moved to approve a bid from Pavement Management for the 2013 advanced surface treatment program at a cost of \$60,430; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Bid – Concrete Pavement, Curb and Gutter

Councilmember Edge moved to approve the bid from Mihalevich concrete for the repair of concrete pavement, curb and gutter for the 2013 pavement program; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

This will affect the streets of LaHarpe, McPherson and Cottage Grove at a cost of \$139,649.20.

Bid – Asphalt Pavement Repair

Councilmember Edge moved to approve the bid of APAC Missouri for the 2013 asphalt street program; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

This will affect the streets of Patterson, Davis and First at a cost of \$629,629.15.

Change Orders – Street Program

Councilmember Edge moved to approve change orders for the 2013 street program within limits of the available funds budgeted in the Transportation Sales tax budget; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Bid – ½ ton Truck

Councilmember Edge moved to approve the purchase of a 2013 ½ ton four-wheel drive truck; seconded by Councilmember Russell.

This truck is a replacement of a 2001 Dodge pickup truck used by the Fire Chief.

Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Bid – Dump Bed, Snow Plow & Anti-icing system

Councilmember Edge moved to approve the purchase of a replacement of a dump bed, snow plow and anti-icing system for the 2001 two-ton truck from Henderson Truck Equipment; seconded by Councilmember Russell. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Bid – Tandem Axle Dump Truck

Councilmember Edge moved to approve the purchase of a three-ton tandem axle dump truck for the Street and Parks Division, and Public Works Department from Al Scheppers Motors; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Buddy Bass N Kids Fishing Tournament at Forest Lake

Councilmember Edge moved to approve a request for tournament use of Forest Lake on May 18, and to allow outboard motors exceeding 90 hp to idle at a speed not to exceed 10 mph between the hours of 7:00 am and 3:00 pm; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Liquor License – Leisure Enterprise

Councilmember Edge moved to approve a liquor license for Leisure Enterprise, which will be contingent upon the City business license being obtained; seconded by Councilmember Russell.

The ownership of Leisure World has reverted back to its previous owners.

Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Board of Adjustment Re-appointment

Councilmember Edge moved to approve the re-appointment of Burnell Helton to the Board of Adjustment to a five-year term; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Housing Authority Re-appointment

Councilmember Edge moved to approve the re-appointment of Pam Windtberg to the Kirksville Housing Authority for a four-year term; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Planning and Zoning Commission Re-appointment

Councilmember Edge moved to approve the re-appointment of Betty McLane-Iles, Mike LaBeth and Doug Kollar to the Planning and Zoning Commission; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Watershed Management Commission Appointment

Councilmember Edge moved to approve the appointment of Dale Stone, in the Community Citizen position, to the Watershed Management Commission; seconded by Councilmember Mills. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Second Reading

BILL NO. 2013-27

ORDINANCE NO. 12055

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, APPROVING A LOT SPLIT WHICH IS PART OF A TRACT OF LAND LOCATED AT 2201 S. BALTIMORE STREET IN KIRKSVILLE, MISSOURI.

WHEREAS, a tract of land which is situated in the South half of the Northwest Quarter of Section 15, Township 62 North, Range 15 West, Adair County, Missouri has been split into two separate lots; and

WHEREAS, the survey has been regularly certified by Mark W. Robertson, licensed surveyor number P.L.S. 2008016665; and

WHEREAS, the two tracts of land are more particularly described as follows:

Description of Tract 1: A tract of land situated in the South half of the Northwest Quarter of Section 15, Township 62 North, Range 15 West, Adair County, Missouri and being more particularly described as follows:

Commencing at the center of the Northwest Quarter of said section; thence along the West 1/16 section line, S 00 degrees 21 minutes 57 seconds West a distance of 30.00 feet to a found iron rod being the Point of Beginning of the description herein, to wit: thence continue South 00 degrees 21 minutes 57 seconds West a distance of 498.00 feet to a found iron rod; thence leaving the last described line, North 90 degrees 00 minutes 00 seconds East a distance of 892.41 feet to a set iron rod; thence South 00 degrees 22 minutes 30 seconds West a distance of 796.37 feet to a set iron rod being a point on the mid section line; thence along the mid section line, North 89 degrees 55 minutes 04 seconds West a distance of 2168.62 feet to a found iron rod being a point on the east right of way line of Route 63; thence along said right of way as follows, North 00 degrees 05 minutes 54 seconds East a distance of 833.00 feet; thence North 89 degrees 54 minutes 06 seconds West a distance of 5.00 feet; thence North 00 degrees 05 minutes 54 seconds East a distance of 435.00 feet; thence North 43 degrees 42 minutes 04 seconds East a distance of 32.13 feet; thence leaving said right of way along the South line of LaHarpe Street, North 90 degrees 00 minutes 00 seconds East a distance of 1265.23 feet to the Point of Beginning. The above tract of land contains 54.30 acres, more or less. Subject to easements and restrictions of record, or not of record, if any.

Description of Tract 2: A tract of land situated in the Southeast Fourth of the Northwest Quarter of Section 15, Township 62 North, Range 15 West, Adair County, Missouri and being more particularly described as follows:

Commencing at the center of the Northwest Quarter of said section; thence along the West 1/16 section line, South 00 degrees 21 minutes 57 seconds West a distance of 528.00 feet to a found iron rod; thence leaving the last described line, North 90 degrees 00 minutes 00 seconds East a distance of 892.41 feet to a set iron rod being the Point of Beginning of the description herein, to wit: thence continue North 90 degrees 00 minutes 00 seconds East a distance of 437.50 feet to a found iron rod; thence South 00 degrees 22 minutes 30 seconds West a distance of 797.00 feet to a point on the mid section line; thence along the mid section line, North 89 degrees 55 minutes 04 seconds West a distance of 437.50 feet to a set iron rod; thence North 00 degrees 22 minutes 30 seconds East a distance of 796.37 feet to the Point of Beginning. The above tract of land contains 8.00 acres, more or less. Subject to easements and restrictions of record, or not of record, if any; and

WHEREAS, the lot under consideration is landlocked, the adjacent landowner - Kirksville Country Club - has agreed to purchase the lot and combine it with their existing property in order to meet city lot split requirements; and

WHEREAS, the "Plat" shall be recorded in the Recorder's Office of Adair County, Missouri, showing the complete plat of land created by the Lot Split.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

That the lot split for the tract of land located as described above at 2201 South Baltimore Street be hereby approved, and the same is made an addition to the City of Kirksville, Missouri, and the portions thereof dedicated to the public are hereby accepted.

This ordinance shall be effective from and after the date of its passage.

BILL NO. 2013-28 **ORDINANCE NO. 12056**
AN ORDINANCE AMENDING CHAPTER 19, SECTIONS 19-71 AND 19-73, OF THE CITY CODE OF THE CITY OF KIRKSVILLE, MISSOURI REGARDING THE BOAT HORSEPOWER AT FOREST LAKE.

WHEREAS, Sections 19-71 and 19-73 of Chapter 19 were amended by action of the City Council on March 18, 2013 to regulate boat registration fees; and

WHEREAS, this Ordinance addresses boat horsepower.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

Section 1. Chapter 19, Section 19-71 of the City Code is amended as follows:

Sec. 19-71 – City registration.

- (a) (4) All motors and boats with 66 to 90 hp **or greater**: Forty-five dollars (\$45.00).
- (b) (4) All motors and boats with 66 to 90 hp **or greater**: Nine dollars (\$9.00).

Section 2. Chapter 19, Section 19-73 of the City Code is amended as follows:

Sec. 19-73 – Maximum horsepower.

- (a) ~~Except as provided in subparagraph (b) below, the maximum operating horsepower for watercraft on Forest Lake will be ninety (90) horsepower or no more than two (2) motors with a combined horsepower of ninety (90) horsepower or no more than two (2) motors with a combined horsepower of ninety (90) horsepower. This will not apply to boats with a main motor combined with a small motor for trolling purposes when they will not be used in tandem and either motor is ninety (90) horsepower or less.~~

Boats equipped with a motor in excess of ninety (90) horsepower shall be allowed to operate at idle, no wake speeds (five (5) miles per hour) only.

- (b) ~~Fishing boats equipped with an outboard motor in excess of ninety (90) horsepower shall be allowed to operate at idle, no wake speeds (five (5) miles per hour) only for the express purpose of participating in fishing tournaments which have been approved in advance by the city council. In granting fishing tournament and other special event variances to this section and the ninety (90) horsepower limit, the city council shall specify the exact dates and times when fishing boats with outboard motors in excess of ninety (90) horsepower shall be permitted, and shall require proof of event insurance in the amount of five hundred thousand (\$500,000.00).~~

The City Council shall reserve the right to consider approval of fishing tournaments.

BILL NO. 2013-29

ORDINANCE NO. 12057

AN ORDINANCE AMENDING CHAPTER 15 OF THE CODE OF THE CITY OF KIRKSVILLE, MISSOURI REGULATING THE SPEED LIMITS OF MOTOR VEHICLES AND TRAFFIC.

WHEREAS, citizen requests for a reduction in the speed limit in the Weatherstone Housing Addition resulted in a review of the existing speed limit and the associated written code contained in section 15-448; and

WHEREAS, it was discovered that the recommended change would improve the problems as identified in this review.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF KIRKSVILLE, MISSOURI AS FOLLOWS:

I. Chapter 15, Section-448 of the code is amended as follows:

Add as a new entry Weatherstone Addition to include: Weatherstone Drive, Weatherbrooke Drive and Breezewood Drive, (20) miles per hour.

II. Effective Date

The modifications to this ordinance shall be effective May 17, 2013.

III. Incorporation into the City of Kirksville Code of Ordinances

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Kirksville, Missouri as an addition or amendment thereto.

BILL NO. 2013-30

ORDINANCE NO. 12057

AN ORDINANCE AMENDING SECTION 25-181 OF THE CITY CODE OF THE CITY OF KIRKSVILLE REGARDING CONTROL OF THE STORMWATER SYSTEM.

WHEREAS Section 25.181 of the City Code was reserved for "Control of the stormwater system" and

WHEREAS NPDES Permit MOR040078 requires the City to adopt measures to control illicit discharge and connection to the City's stormwater system,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

Section 25.181 is replaced by the following:

Section 25.181. Control of stormwater system.

SECTION 1 PURPOSE/INTENT

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Kirksville and surrounding areas through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user.
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system.
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

SECTION 2 DEFINITIONS

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency: employees or designees of the director of the municipal agency designated to enforce this ordinance.

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity: Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 5 acres or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 7 of this ordinance.

Illicit Connections: An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by EPA or the Missouri Department of Natural Resources, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge: Any discharge to the storm drain system that is not composed entirely of storm water.

Person: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant. Anything which causes or contributes to pollution: Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System: Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

SECTION 3 APPLICABILITY

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

SECTION 4 RESPONSIBILITY FOR ADMINISTRATION

The City of Kirksville shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the City Manager of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

SECTION 5 SEVERABILITY

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 6 ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

SECTION 7 DISCHARGE PROHIBITIONS

Prohibition of Illegal Discharges:

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- (a) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
- (b) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- (c) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
- (d) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Prohibition of Illicit Connections:

- (a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

SECTION 8 SUSPENSION OF MS4 ACCESS

Suspension due to Illicit Discharges in Emergency Situations

The City of Kirksville may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge:

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

SECTION 9 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Kirksville prior to the allowing of discharges to the MS4.

SECTION 10 MONITORING OF DISCHARGES

A. Applicability.

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities:

- (a) The City of Kirksville shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.
- (b) Facility operators shall allow the City of Kirksville ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- (c) The City of Kirksville shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.
- (d) The City of Kirksville has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Kirksville and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (f) Unreasonable delays in allowing the City of Kirksville access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (g) If the City of Kirksville has been refused access to any part of the premises from which stormwater is discharged, and is able to demonstrate probable cause to

believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 11 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The City of Kirksville will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 12 WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 13 NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City Manager, City of Kirksville, 201 S. Franklin Street, Kirksville, Missouri 63501 within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such

establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

SECTION 14 ENFORCEMENT

A. Notice of Violation.

Whenever The City of Kirksville finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and

- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

SECTION 15 APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within 20 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

SECTION 16 ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 7 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

SECTION 17 COST OF ABATEMENT OF THE VIOLATION

Within 60 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 20 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 5 percent per annum shall be assessed on the balance beginning on the 30th day following discovery of the violation.

SECTION 18 INJUNCTIVE RELIEF

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would

create further violations or compelling the person to perform abatement or remediation of the violation.

SECTION 19 COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

SECTION 20 VIOLATIONS DEEMED A PUBLIC NUISANCE

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

SECTION 21 CRIMINAL PROSECUTION

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of 500 dollars per violation per day and/or imprisonment for a period of time not to exceed 90 days.

The authorized enforcement agency may recover all attorneys' fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SECTION 22 REMEDIES NOT EXCLUSIVE

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

SECTION 23 ADOPTION OF ORDINANCE

This ordinance shall be in full force and effect immediately after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Councilmember Edge moved to adopt Bill Nos. 2013-27, 2013-28, 2013-29 and 2013-30 on second reading; seconded by Councilmember Mills. The vote carried as follows: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Council Comments

Mari Macomber referred to the Council Newsletter subject regarding gross receipts fees. Beauty shops, hotels, motels, barber shops should not have been billed for these fees. One business has asked for reimbursement. The City Attorney was consulted, and he said that if it was an honest mistake, then there is no legal requirement to

reimburse the fees. Mrs. Macomber suggests reimbursement of what was paid in the last quarter of 2012 when the mistake was found.

Gross receipt forms were sent to not-for-profit businesses in town. Preferred Family has asked to be exempt from this requirement. Council consensus was to exempt not-for-profit locations.

Councilmember Robert Russell is the City's representative on the Northeast Missouri Regional Planning Commission General Membership, but is unable to continue meeting this Commission's obligations. Councilmember Edge was asked to consider serving on this committee since he also attends the Solid Waste Management meetings held on the same date as the RPC General Membership meetings. Councilmember Moritz was also asked to consider serving on this committee.

Mrs. Macomber asked the City Council to discuss at a future meeting the possibility of naming a building or structure at the Airport after David Hall, former Airport Administrator, who recently passed away.

Adjournment

There being no further business to come before the Council, Councilmember Edge moved to adjourn; seconded by Councilmember Moritz. The vote carried as follows: Ayes – Mayor Detweiler; Councilmembers Edge, Mills, Moritz and Russell. Noes – 0.

Mayor Detweiler adjourned the meeting at 7:45 p.m.

Vickie Brumbaugh, CMC MRCC
City Clerk